REMARKS

The Office Action dated December 8, 2009, and the Advisory Action dated February 22, 2010, have been received and carefully considered. In this response, claims 26, 54, 63, 64, 69, and 73 have been amended. No new matter has been added. Entry of the amendments to claims 26, 54, 63, 64, 69, and 73 is respectfully requested. Reconsideration of the pending rejections in the present application is also respectfully requested based on the following remarks.[1]

I. THE EXAMINER INTERVIEW

At the outset, the undersigned thanks the Examiner for the courtesies extended during the interview conducted on February 16, 2010, during which agreement was reached on how the claims may be amended to overcome the cited references, and which is reflected in this response.

[1] As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such in the future.

II. THE OBVIOUSNESS REJECTION OF CLAIMS 26-29, 32, 38-47, 54-61, 63-65, 69, 71, AND 73

On pages 3-5 of the Office Action, claims 26-29, 32, 38-47, 54-61, 63-65, 69, 71, and 73 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Publication No. 2003/0167380 ("Green") in view of U.S. Patent No. 6,598,131 ("Kedem"). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or "secondary considerations," of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An "expansive and flexible approach" should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather,

there must still be some "reason that would have prompted" a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Regarding claim 26, the Examiner asserts that the claimed invention would have been obvious in view of Green and Kedem. Applicants respectfully disagree. However, in order to forward the present application toward allowance, Applicants have amended claim 26 along the lines discussed during the Examiner Interview to more specifically define the claimed invention, and specifically those features that further differentiate the claimed invention from Green and Kedem, as well as the other cited references. In particular, Applicants respectfully submit that Green and Kedem, either alone or in combination, fail to disclose, or even suggest, a method for providing data comprising storing, in an original data store, all write commands directed to a primary data store during a time interval so as to accumulate backup data, wherein each write command is stored when directed to the primary data store, as presently claimed. Also, Applicants respectfully submit that Green and

Kedem, either alone or in combination, fail to disclose, or even suggest, a method for providing data comprising a separate step of creating the virtual data store from data stored in the original data store, as presently claimed. Further, as previously noted in prior responses, Green and Kedem do not disclose receiving two commands, one to create a virtual data store, and another for data at a specified address in the virtual data store, as claimed. Additionally, as previously noted in prior responses, Green and Kedem do not disclose creating a virtual data store that reflects a state of a primary data store at "any point in time during the time interval," as claimed. In contrast, as previously noted in prior responses, Green is limited to creating snapshots of a system at particular points of time, and thus Green can only restore a system to defined snapshot points in time. Kedem, as previously asserted by the Examiner, simply discloses intercepting read/write requests.

In view of the foregoing, Applicants respectfully submit that claim 26 should be allowable over Green and Kedem.

Regarding claims 27-29, 32, and 38-47, these claims are dependent upon independent claim 26. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed. Cir.

1988). Thus, since independent claim 26 should be allowable as discussed above, claims 27-29, 32, and 38-47 should also be allowable at least by virtue of their dependency on independent claim 26. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, claim 28 recites that "the original data store comprises a current store and a time store." Green and Kedem, either alone or in combination, fail to disclose or suggest this claimed feature.

Regarding claims 54, 63, 64, 69, and 73, these claims, while of differing scope and of different scope than claim 26, recite subject matter related to claim 26. Thus, the arguments set forth above with respect to claim 26 are equally applicable to claims 54, 63, 64, 69, and 73. Accordingly, is it respectfully submitted that claims 54, 63, 64, 69, and 73 are allowable over Green and Kedem for analogous reasons as set forth above with respect to claim 26.

Regarding claims 55-61 and 65, these claims are dependent upon independent claims 54 and 64, respectively. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Thus, since independent claims 54 and 64

should be allowable as discussed above, claims 55-61 and 65 should also be allowable at least by virtue of their dependency on independent claims 54 and 64, respectively. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, claim 59 recites "[t]he method of claim 58 wherein the original data store is implemented as a current store and a time store." Green and Kedem, either alone or in combination, fail to disclose or suggest this claimed feature.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 26-29, 32, 38-47, 54-61, 63-65, 69, 71, and 73 be withdrawn.

III. THE OBVIOUSNESS REJECTION OF CLAIMS 30, 31, 33-37, 48-53, 62, 66-68, 70, and 72

On pages 6-9 of the Office Action, claims 30, 31, 33-37, 48-53, 62, 66-68, 70, and 72 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Green in view of Kedem, and in further view of Official Notice. The Examiner has provided additional guidance on what the Examiner takes as Official Notice with regard to claims 30, 31, 33-37, 48-53, 62, 66-68, 70, and 72, however Applicants continue to respectfully traverse

the rejections of claims 30, 31, 33-37, 48-53, 62, 66-68, 70, and 72 in relying on Official Notice. Applicants respectfully submit that the rejections under Green and Kedem and Official Notice are moot, given the above arguments with respect to the independent claims. Applicants also traverse this rejection because there is no support in the record for the conclusion that the identified features are "old and well known." In accordance with MPEP § 2144.03, the Examiner must cite a reference in support of his position.

Regarding claims 30, 31, 33-37, and 48-53, these claims are dependent upon independent claim 26. Regarding claim 62, this claim is dependent upon independent claim 54. Regarding claims 66-68, these claims are dependent upon independent claim 63. Regarding claims 70 and 72, these claims are dependent upon independent claim 69. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Thus, since at least independent claims 26, 54, 63, and 69 should be allowable as discussed above, dependent claims 30, 31, 33-37, 48-53, 62, 66-68, 70, and 72 should also be allowable at least by virtue of their dependency the independent claims noted above. In view of the foregoing, it is respectfully requested

that the aforementioned obviousness rejection of claims 30, 31, 33-37, 48-53, 62, 66-68, 70, and 72 be withdrawn.

IV. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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